

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTAGIO CORPORATION,

Plaintiff,

v.

TIGER OAK PUBLICATIONS, INC.,

Defendant.

No. C 06-3592 PJH

**ORDER DENYING MOTION
TO VACATE HEARING DATE**

Before the court is defendant's administrative request to vacate the upcoming hearing on plaintiff's motion for summary judgment, currently set for October 31, 2007. Defendant seeks to vacate the hearing in view of its recent Ninth Circuit appeal of this court's September 21, 2007 order granting plaintiff's motion to strike defendant's counterclaims. Defendant also asserts that the October 31 hearing should be vacated, because plaintiff did not obtain leave of court prior to filing its motion for summary judgment, and because plaintiff's notice of motion for summary judgment cites to a statute which does not actually exist.

Defendant's motion is hereby DENIED. First, the court's order granting plaintiff's motion to strike defendant's counterclaims is not an appealable order, as it is interlocutory in nature and does not constitute final resolution or judgment in this action. As such, defendant's pending appeal is improper, and the court's jurisdiction to hear plaintiff's dispositive motion remains intact. Second, plaintiff's motion for summary judgment has been properly filed, as the court's pretrial schedule specifically ordered the parties to file dispositive motions by September 26, with summary judgment hearings to be held on October 31, 2007. Last, although plaintiff's notice of motion does include an incorrect

1 citation, as defendant points out, this does not alter the fact that plaintiff's motion is properly
2 authorized under Federal Rule of Civil Procedure 56, the court's local rules, and the court's
3 own pretrial schedule.

4 Defendant's reply brief filed in support of its administrative motion is also STRICKEN
5 for failure to comply with Civil Local Rule 7-11 (b, c)(authorizing the filing of an opposition
6 brief only).

7
8 **IT IS SO ORDERED.**

9 Dated: October 11, 2007



PHYLLIS J. HAMILTON
United States District Judge